

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAMES SEABA and
CORY PHILLIPS,

Plaintiffs,

v.

Civ. No. 02-103 LH/RHS

MESOSYSTEMS TECHNOLOGY, INC.,

Defendant.

AFFIDAVIT OF CHARLES J. CALL
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Charles J. Call, being first duly sworn upon oath, states as follows:

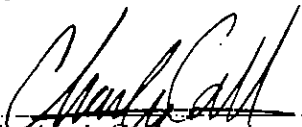
1. I am the Chief Executive Officer for MesoSystems Technology, Inc. ("MesoSystems"), defendant in this action.
2. I have personal knowledge of the matters stated herein.
3. I submit this affidavit in support of Defendant's Motion to Dismiss Plaintiffs' Complaint and for Attorneys' Fees and Costs as a Sanction for Plaintiffs' Abuse of the Discovery Process.
4. Plaintiffs James Seaba and Cory Phillips (collectively, "Plaintiffs") entered into an employment relationship with MesoSystems on or about September 1, 2001.
5. Upon commencement of their employment with MesoSystems, Plaintiffs were each issued laptops for use in engaging in MesoSystems-related business.

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6. On December 6, 2001, Plaintiffs ceased their employment with MesoSystems. On that date, I called both Seaba and Phillips on their cell phones, but was unable to reach to them directly. I left voicemails on Plaintiffs' cell phones whereby I directed both Seaba and Phillips to return all MesoSystems' property that was then in their possession, including computers, electronic files, emails, papers, and reports. I further directed Plaintiffs to not delete or copy any files or other information from the MesoSystems-issued laptops, and that the deletion or copying of any such files would constitute destruction of MesoSystems' property.

7. Any use of the laptops after the cessation of Plaintiffs' employment with MesoSystems and before the return of the laptops to MesoSystems was unauthorized.

8. Instead, MesoSystems, through its counsel, made repeated demands for the return of the laptops and other MesoSystems-owned items that were then in Plaintiffs' possession. Plaintiffs did not return the laptops until January 30, 2002, almost eight weeks after the cessation of their employment.

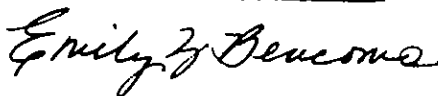


Charles J. Call

SUBSCRIBED and SWORN to before me this 21 day of April, 2003.

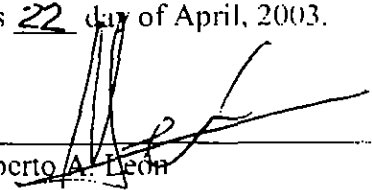


OFFICIAL SEAL
EMILY Y. BENCOMO
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 6/13/04



EMILY Y. BENCOMO
Print Name: _____
Notary Public in and for the State of New
Mexico, residing at 3909 RIO GRANDE NW 87107
My commission expires: 6/13/04

I HEREBY CERTIFY that a true
And correct copy of the foregoing
was ~~presented~~^{hand delivered} to counsel of record
this 22 day of April, 2003.



Alberto A. Leon